

§ 3.1705 Burial allowance based on non-service-connected death.

(a) *General rule.* VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount. Payment of the non-service-connected burial allowance is subject to other applicable regulations in subpart B of this part.

(b) *Eligibility.* A burial allowance is payable under this section for a veteran who, on the date of death:

(1) Was receiving VA pension or disability compensation;

(2) Would have been receiving disability compensation but for the receipt of military retired pay; or

(3) Had pending any of the following claims:

(i) An original claim for pension or disability compensation, and the evidence in the claims file on the date of death and any evidence received under paragraph (d) of this section is sufficient to grant pension or disability compensation effective before the date of death; or

(ii) A claim to reopen a previously denied pension or disability compensation claim, based on new and material evidence, and the evidence in the claims file on the date of the veteran's death and any evidence received under paragraph (d) of this section is sufficient to reopen the claim and grant pension or disability compensation effective before the date of death; or

(iii) A claim for which a person would be eligible to substitute for the deceased veteran under 38 U.S.C. 5121A, Substitution in case of death of claimant, and that claim, once processed to completion by the substitute, results in the grant of pension or disability compensation effective before the date of death.

(c) *Evidence in the claims file on the date of the veteran's death* means evidence in VA's possession on or before the date of the deceased veteran's death, even if such evidence was not part of the VA claims file on or before the date of death.

(d) *Requesting additional evidence.* If the veteran had either an original claim or a claim to reopen pending on the date of death and there is sufficient evidence in VA's possession to support an award of compensation or pension prior to the date of death, but VA determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, VA will request such evidence. If VA does not receive such evidence within 1 year after the date of the request, it will deny the claim.

(e) *Additional allowances available based on non-service-connected death.* In addition to the non-service-connected burial allowance authorized by this section:

(1) VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery, but only if eligibility under paragraphs (b) of this section is based on a pending claim for, or award of, disability compensation, or eligibility for disability compensation but for receipt of military retired pay, rather than a claim for, or award of, pension; and

(2) VA may pay the plot or interment allowance for burial in a State veterans cemetery under § 3.1707(a), Plot or interment allowance.

(Authority: 38 U.S.C. 2302, 2303, 2304, 2308)

Cross Reference: § 3.1(i), for the definition of "State".

§ 3.1706 Burial allowance for a veteran who died while hospitalized by VA.

(a) *General rule.* VA will pay up to the maximum burial allowance specified in 38 U.S.C. 2303(a) for the burial and funeral expenses of a veteran described in paragraph (b) of this section.

(b) *Eligibility.* A burial allowance is payable under this section for a veteran whose death was not service-connected and who died while hospitalized by VA. For purposes of this allowance, a veteran was hospitalized by VA if the veteran:

(1) Was properly admitted to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a);

(2) Was transferred or admitted to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703;

(3) Was transferred or admitted to a nursing home for nursing home care at the expense of the U.S. under the authority of 38 U.S.C. 1720;

(4) Was transferred or admitted to a State nursing home for nursing home care for which payment is authorized under the authority of 38 U.S.C. 1741;

(5) Was traveling under proper prior authorization, and at VA expense, to or from a specified place for purpose of examination, treatment, or care; or

(6) Was hospitalized by VA pursuant to any of paragraphs (b)(1) through (4) of this section but was not at the facility at the time of death and was:

(i) On authorized absence that did not exceed 96 hours at the time of death;

(ii) On unauthorized absence for a period not in excess of 24 hours at the time of death; or

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(iii) Absent from the facility for a period not in excess of 24 hours of combined authorized and unauthorized absence at the time of death.

(c) *Hospitalization in the Philippines.* Hospitalization in the Philippines under 38 U.S.C. 1731, 1732, and 1733 does not meet the requirements of this section.

(d) *Additional allowances available based on death while hospitalized by VA.* In addition to the burial allowance authorized by this section:

(1) VA will reimburse for the expense of transporting the remains of a person described in paragraph (b) of this section to the place of burial subject to the limitations of §3.1709 and where the death occurs within a State and:

(i) The place of burial is in the same State or any other State; or

(ii) The place of burial is in Canada or Mexico. However, reimbursement for transportation of the remains for such burial is authorized only from the place of death within a State to the port of embarkation within a State, or to the border limits of the United States.

(2) VA may pay the plot or interment allowance for burial in a veterans cemetery under §3.1707, Plot or interment allowance.

(Authority: 38 U.S.C. 2303(a), 2308)

§3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.

(a) *General eligibility.* For a veteran who was eligible for burial in a national cemetery under 38 U.S.C. 2402, but was not buried in a national cemetery or other cemetery under the jurisdiction of the U.S., VA will pay the allowances described below, provided all criteria are met.

(b) *Plot or interment allowance for burial in a State veterans cemetery.* VA will pay the plot or interment allowance in the amount specified in 38 U.S.C. 2303(b)(1) (without regard to whether any other burial benefits were provided for that veteran) to a State, or an agency or political subdivision of a State, that provided a burial plot or interment for the veteran without charge if the State, or agency or political subdivision of the State:

(1) Is claiming the plot or interment allowance for burial of the veteran in a cemetery, or section of a cemetery, owned by the State or agency or subdivision of the State;

(2) Did not charge for the expense of the plot or interment; and

(3) Uses the cemetery or section of a cemetery solely for the interment of:

(i) Persons eligible for burial in a national cemetery; and

(ii) In a claim based on a veteran's death after October 31, 2000, either:

(A) Deceased members of a reserve component of the Armed Forces not otherwise eli-

gible for interment in a national cemetery; or

(B) Deceased former members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery who were discharged or released from service under conditions other than dishonorable.

(c) *Plot or interment allowance payable based on burial in other than a State veterans cemetery.* Unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less, VA will pay the maximum plot or interment allowance specified in 38 U.S.C. 2303(b)(2) to a claimant who incurred plot or interment expenses relating to the purchase of a burial plot for a deceased veteran if the veteran is buried in a cemetery other than a cemetery described in paragraphs (b)(1) and (b)(3) of this section and:

(1) The veteran is eligible for a burial allowance under §3.1705, Burial allowance based on non-service-connected death;

(2) The veteran is eligible for a burial allowance under §3.1706, Burial allowance for a veteran who died while hospitalized by VA;

(3) The veteran was discharged from active service for a disability incurred or aggravated in line of duty (VA will accept the official service record of such discharge as proof of eligibility for the plot or interment allowance and VA will disregard any previous VA determination made in connection with a claim for monetary benefits that the disability was not incurred or aggravated in line of duty); or

(4) The veteran, at the time of discharge from active service, had a disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(d) *Definitions.* For purposes of subpart B of this part, *plot* or *burial plot* means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. *Plot or interment expenses* are those expenses associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of remains for burial or interment.

(Authority: 38 U.S.C. 501(a), 2303(b))

Cross Reference: §3.1(i) for the definition of "State".

Pt. 3, Subpt. B, Nt. Burial of a veteran whose remains are unclaimed.

(a) *General.* VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount.